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ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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April 28, 2008

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By Fax and U.S. Mail

Mr. John C. Millian
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306

Dear Mr. Millian:

I was very disappointed by your April 22 letter on behalf of Professor Yoo, which declined my invitation for his voluntary appearance before the Committee on May 6. We remain willing to work with you to schedule an alternative date, and hope that your client will reconsider his refusal. If I have not heard from you to that effect by the end of this week, however, I will have no choice but to consider the use of compulsory process.

Your letter fails to provide any proper basis for Professor Yoo's refusal to appear before the Committee. As my April 8 letter made clear, we are interested in hearing from Professor Yoo about his personal knowledge of key historical facts, including memoranda that he wrote, not current Department of Justice (DOJ) policies. Although you claim that Professor Yoo's memoranda while at the Office of Legal Counsel (OLC) "speak for themselves," Professor Yoo has himself spoken extensively on these subjects on the record to the press, as I noted in my April 8 letter. There is simply no justification for him to refuse to appear before the Committee to testify on such subjects.

With respect to your concerns about possible executive or other privilege, such issues are properly addressed on a question-by-question basis, as current DOJ officials have done, not by a blanket refusal to testify. Although the Committee is not bound by DOJ's views on what subjects are appropriate for a former official's testimony, even your letter does not suggest any objection by DOJ to testimony by Professor Yoo on such subjects as the conclusions reached and reasoning supporting his publicly available OLC opinions.

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Finally, your letter refers to currently pending civil litigation against Professor Yoo concerning actions taken during his work at DOJ. Yet numerous witnesses have testified before the Committee and other Congressional committees about subjects pending in litigation. I am aware of no basis for the remarkable claim that pending civil litigation somehow immunizes an individual from testifying before Congress.

Once again, I hope that you and your client will reconsider his refusal to testify in order to avoid the need for compulsory process. Please address any communications to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680).

Sincerely,

A handwritten signature in black ink, reading "John Conyers, Jr." with a stylized flourish at the end.

John Conyers, Jr.
Chairman

cc: Hon. Lamar S. Smith
Hon. Jerrold Nadler
Hon. Trent Franks
Hon. Brian A. Benczkowski